IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20814 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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R.B.POLYMERS LIMITED - Petitioner(s)

Versus

AMARSINGH PURUSINGH SHEKAWAT & 1 - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner(s) : 1,
MR DIPAK R DAVE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/10/2005

ORAL JUDGMENT

1. Learned Advocate Mr. Clerk seeks permission to delete Respondent no.2. Leave to delete respondent no.2 is granted. Rule. Mr. Dave waives service of Rule on behalf of Respondent no.1. Petition is taken up for

final disposal today by joint request.

2. In the present petition, the petitioner has challenged the legality of an award dated 17th May, 2005 passed by Labour Court, Ahmedabad. By the impugned award, Labour Court was pleased to allow reference of the respondent, reinstatement was granted with full back wages.

3. Before the Labour Court the respondent had approached by filing a reference. Case of the respondent was that he was employed by the petitioner as a security guard. His services were terminated when he demanded proper wages and other benefits. The case of the respondent was that his termination was on account of victimization and amounted to unfair labour practice. On the other hand case of the petitioner was that the respondent was never employed by the petitioner and that the respondent has discharged the duties as a security guard for the petitioner through a security agency employed by the petitioner. Thus, the central question before the Labour Court was whether the respondent was an employee of the petitioner or not and whether his services were illegally terminated or not.

4. Before the Labour Court both sides lead evidence to establish their respective versions. The Respondent examined himself and produced certain documents. Petitioner examined one shri Ketul Dolarbhai Dave who was the Administrative Officer of the petitioner company. The petitioner also examined witness Shri Sukhiyarsingh Narayansingh Sheikhawat who was running a private security service by the name of Vijay Secruity Services. After appreciating the evidence on record, Labour Court came to the conclusion that the respondent was in fact employed by the petitioner and that his services were terminated without any notice or without following any other formality and that the same was on account of the demands made by the respondent for being paid benefits available under the Labour laws.

4.1 For coming to the above conclusions, Labour Court noted that the respondent was given a room in the premises of the petitioner for residing there. The Labour Court also noted that witness of the petitioner Shri Ketul Dolarbhai Dave could not state with certainty whether there was any written agreement between the petitioner company and Vijay Security Services for providing security guards to the petitioner. He could not state whether the petitioner company had obtained

necessary license under the Contract Labour (Regulation and Abolition) Act, 1970. He however assured the Court that such license would be produced later on. He agreed to the suggestion that security service is an essential service to the petitioner company. He admitted that the petitioner company did receive the notice issued by the respondent demanding better wages. He also admitted and no reply was given to such a notice. He admitted that the respondent had signed the gate pass. He also admitted that document Exh. 13 was signed by General Manager of the petitioner company one Shri Paresh Rawal. He admitted that a room was given to the respondent by the petitioner company. He admitted that no notice or notice pay or retrenchment compensation was paid to the respondent. He stated that the petitioner is not prepared to reinstate the respondent.

4.2 The Labour Court also noted the deposition of Shri Sukhiyarsingh who was running Vijay Security Services. Said witness could not state whether any written agreement was entered into between the petitioner and security agency for supplying security guards. Said witness could not produce any such document. Labour Court noted that said Shri Sukhiyarsingh had written a letter directly to the Labour Court stating that the

respondent was discharging the duty at the premises of the petitioner company through Vijay Security Services and he has left the services on his own volition from 9/7/1997. In this regard however Labour Court observed that said witness in the witness box had given contradictory statement. In his deposition he stated that he does not know whether respondent herein was working in his institution or not. He could not state whether the respondent had left the services in the year 1997 or not. He could not state as to when did the respondent last work for him. He agreed to have written the letter marked 39/1 and stated that such a letter was written on the basis of the documentary evidence available with him. He assured the Court that such documents would be produced later on. This was never done. In his cross-examination said witness admitted that he gives appointment orders to the employees whom he engages. He admitted that he has no document to show that the respondent was appointed by him. He admitted that he has no documentary evidence to show that the respondent had worked for his institute. He admitted that he had never seen the respondent. He admitted that he had never issued any notice to the respondent for remaining absent. He admitted that he has not produced documents listed in Application Exh. 48. He admitted

that he does not know how respondent was engaged by the petitioner company. He admitted that the contract between him and the petitioner company is still continued. He admitted that he has come to give deposition at the instance of the petitioner company.

4.3 The Labour Court noted that by an Application Exh. 48 the witness Shri Sukhiyarsingh was called upon to produce various documents such as appointment order of the respondent, agreement entered into between the security service and the petitioner company, provident fund number of the respondent, registration of the security service under the Contract Labour Act, pay register of the security service, attendance register and identity card register etc of the security service for the year between 1996-1997. Labour Court noted that though these documents were ordered to be produced, the witness has not produced the same.

4.4 On the basis of these factors Labour Court came to the conclusion that the respondent was not employed by the security service and the attempt was made by the petitioner to create evidence to defeat the legitimate rights of the respondent. Labour Court came to the conclusion that the contents of the letter marked 39/1

are not believable and are contrary to the evidence in the form of deposition of the witness Shri Sukhiyarsingh.

4.5 The Labour Court, therefore, found that the respondent was employed by the petitioner, that he was terminated when he demanded proper wages and other rights flowing from the labour laws and issued notice in this regard to the petitioner company and also wrote letters to the Factory Inspector, Government Labour Officer, Labour Commissioner etc. On the basis of these conclusions Labour Court was pleased to set aside the termination of the respondent and grant reinstatement with full back wages.

5. Learned advocate Mr. Clerk urged before me that the Labour Court erred in coming to the above conclusion. He submitted that burden was on the respondent to establish that he was employed by the petitioner and not on the petitioner to establish that the respondent was not employed, by the petitioner. He submitted that there is no positive evidence to establish that the respondent was engaged by the petitioner and even if the evidence of Shri Sukhiyarsingh was not believable the same would not establish the case of the respondent of his direct employment. He submitted that the Labour Court gravely

erred in holding that the respondent was engaged by the petitioner and not through the contractor.

5.1 Learned advocate Mr. Clerk also submitted that there are documents to establish that the respondent was engaged not by the petitioner but by the security service. He submitted that such documents were not produced before the Labour Court on account of negligence on the part of the advocate and that the petitioner be given an opportunity to present the same before the Labour Court by remanding the proceedings.

6. Learned advocate Mr. Dave appearing for the respondent on a Caveat submitted that the Labour Court has committed no error much less a jurisdictional error. The conclusion of the Labour Court are purely of factual findings and the same are supported by evidence on record. The conclusions, therefore, are not required to be interfered with in exercise of powers under Article 226 and 227 of the Constitution of India.

6.1 Having considered the material on record and rival submissions it can be seen that there was ample evidence on record to permit the Labour Court to draw a conclusion that the respondent was employed by the petitioner.

Firstly there is no dispute about the fact that the respondent was given a room to reside in by the petitioner in the premises of the petitioner's factory. This fact was proved by the respondent by producing a letter signed by the Manager of the petitioner Company. In fact it was also admitted by Shri Ketul Dave who was examined by the petitioner as a witness before the Labour Court. Additionally neither the Administrative Officer of the petitioner Shri Ketul Dave nor the Proprietor of the Vijay Security Services Shri Sukhiyarsingh could state before the Labour Court whether there was any written agreement between the security service and the petitioner for providing security guards. No such document was produced on record before the Labour Court. Thirdly Shri Ketul Dave could not state with any degree of certainty the details about the engagement of the respondent during which he had discharged his duties and when he stopped discharging such duties. He also could not state whether the petitioner had obtained license to employ contract labour. Fourthly even the Properitor of Vijay Security Services Shri Sukhiyarsingh could not produce any documents to suggest that the respondent was employed by the security service. Though he admitted that appointment orders are being issued to the employees, in case of the respondent no such document was

produced. In fact he could neither produce any documents of engagement of the respondent nor could produce any documents through which it can be established that Vijay Security Services had provided security guards to the petitioner company. He in fact admitted that he had never seen the respondent. He had never issued notice to the respondent for not remaining present. He could not state when the respondent was engaged by the security service. Significantly he could not even produce several documents called upon by the Labour Court to produce before the Court. Such documents demanded by the respondent and directed to be produced by the Labour Court included appointment order of the respondent, the P.F. number of the respondent workman, registration of the security service under the Contract Labour Act and several such other documents which were relevant and germane for the inquiry being conducted by the Labour Court.

6.2 It can thus be seen that the respondent had not only entered the witness box and stated his version on oath before the Labour Court, he had produced a document establishing that he was given a room to reside in by the petitioner company. On the other hand though serious effort was made by the petitioner to counter the version

of the respondent about his engagement by the petitioner, both the witnesses examined by the petitioner company more than damaged the cause of the petitioner. Person no less responsible than the Administrative Officer of the petitioner in the witness box before the Labour Court could not state whether there was any written agreement between the Vijay Security Services and the petitioner for supplying security guards. He could not give any details about the work of the respondent. He could not give details regarding the question whether the license was obtained according to Contract Labour Act. Second witness Shri Sukhiyarsingh examined by the petitioner also did not help the cause of the petitioner company. He also could not state whether there was any written agreement between the parties for supplying security guards,he could not produce any other documents. He could not give details of engagement of the respondent by the security service. Though he stated that he had written letter marked 39/1 on the basis of documentary evidence, he failed to produce such documents till the reference was concluded. He also failed to produce documents called upon by the respondent and directed by the Labour Court to produce before the Court.

6.3 It is difficult to appreciate that a company which

engages more than 50 workers engages security agency for providing guards without any written agreement. Not only an agreement, no other document, letter or correspondence was produced to establish that Vijay Security Services provided guards for the petitioner company. Documents sought to be summoned by the respondent were not produced. Even the employee of the petitioner company not only failed to produce documents of importance and relevance, he could not state with authority whether there was any written agreement or not between Vijay Security Services and the petitioner company. He could not even state whether the petitioner had obtained license under the Contract Labour Act for engaging contract labourer. All these aspects of the matter leave no manner of doubt that the Labour Court was perfectly justified in coming to the conclusion that the respondent was engaged and employed by the petitioner and not by Vijay Security Service as suggested by the petitioner company. These are purely factual findings. There was sufficient material on record to permit the Labour Court to come to such conclusions. In fact I am in respectful agreement with the view of the Labour Court. In any case findings cannot be categorised as perverse so as to permit interference by this Court in exercise of powers under Article 226 and 227 of the Constitution of India.

It is by now well settled that in exercise of writ jurisdiction while examining the decision of the Labour Court, High Court cannot reappreciate the findings as an Appellate Court. Reference in this regard can be made to the decision of the Hon'ble Supreme Court reported in 2005 (3) SCC 193.

7. I am unable to accept the request of the learned advocate Mr. Clerk for remanding the proceedings. No case is made out for remand. Why certain documents were not produced earlier before the Labour Court and exactly what action was taken against the advocate if despite being supplied with such documents and despite being requested to produce the same, the documents were not produced is not stated. In the present petition also these documents are not annexed so as to show its relevance. Remand cannot be insisted upon to give second chance or a second innings to permit a party to plug the loopholes and improve on the defence. Unless strong grounds are made out and strong prejudice and injustice is shown, it would be unjust to set aside an award which has been drawn by the Labour Court on the basis of evidence on record. In fact the petitioner had participated in the reference proceedings with full seriousness and vigour. It is not a case where the reference has gone by default. After

full participation, examining all witnesses and production of documents, if the Labour Court concludes the proceedings, it would not be appropriate to re-open such proceedings and order remand for the asking. This request is, therefore, not accepted.

8. The question regarding proper relief however, is required to be considered. Labour Court has granted reinstatement with full back wages. There is no discussion about the reason why the Labour Court was inclined to grant 100% back wages. Question of back wages depends upon several factors and not just on illegality of the termination order or the absence of proof of gainful employment during the intervening period. Labour Court had not referred to length of the previous service nor there was any other discussion as to why 100% back wages would be appropriate in present case. Consequently directions for payment of 100% back wages are required to be modified. The direction for reinstatement also calls for a closer scrutiny. Respondent was discharging his duties as a guard. The post holds a certain degree of sensitivity and is a position of trust. In facts and circumstances of the case, would it be appropriate to direct reinstatement or would it be better to provide compensation in lieu

thereof is a question required to be considered.

9. In fact of the present case, I find that 100% back wages cannot be justified and it would be appropriate to provide that the respondent shall be entitled to receive 50% back wages for the intervening period. Regarding the direction for reinstatement also in facts of the present case especially considering that there has been a great deal of bitterness between the parties that the respondent was engaged as a security guard that his nature of duties would require not only integrity and honesty but also complete dedication and sincerity, it would be appropriate to provide for compensation in lieu of reinstatement.

10. In the result, the award of the Labour Court is modified by providing that the respondent is entitled to 50% back wages for the intervening period from the date of termination till award and will be entitled to receive Rs. 50,000/- by way of compensation in lieu of reinstatement. With these directions, the petition is disposed of.

(Akil Kureshi, J.)

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